

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charlie Hartford	Team: Squad #12	CCRB Case #: 201810055	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/28/2018 4:28 PM, Monday, 12/03/2018, Tuesday, 12/03/2019	Location of Incident: 14th Street–Union Square subway station and over the phone	Precinct: 13	18 Mo. SOL 5/28/2020	EO SOL 1/12/2021	
Date/Time CV Reported Mon, 12/03/2018 5:15 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 12/03/2018 5:15 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. POM Jason Wells	07082	935962	TB DT04
3. POM Atik Hossain	19223	950597	TB DT04

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Lennoxann Samerson	01470	954312	TB DT04
2. SGT Michael Hall	01937	934986	TB DT04

Officer(s)	Allegation	Investigator Recommendation
A.POM Atik Hossain	Force: On November 28, 2018, at 14th Street–Union Square subway station in Manhattan, Police Officer Atik Hossain used physical force against § 87(2)(b)	
B. An officer	Force: On November 28, 2018, at 14th Street–Union Square subway station in Manhattan, an officer hit § 87(2)(b) against the ground.	
C.POM Jason Wells	Abuse: On December 3, 2018, over the phone, Police Officer Jason Wells did not process § 87(2)(b)'s complaint regarding officers.	

Case Summary

On December 3, 2018, § 87(2)(b) filed this complaint with the CCRB via the on-line website.

On November 28, 2018, at 4:28 p.m., at 14th Street–Union Square subway station in Manhattan, Police Officer Atik Hossain of Transit Bureau District 4 allegedly used physical force against § 87(2)(b) (Allegation A: Force, § 87(2)(g)). An officer allegedly hit § 87(2)(b) against the ground (Allegation B: Force, § 87(2)(g)). § 87(2)(b) was arrested as a result of this incident.

On December 3, 2018, at approximately 3:31 p.m., over the phone, Police Officer Jason Wells of Transit Bureau District 4 did not process § 87(2)(b)'s complaint regarding officers (Allegation C: Abuse of Authority, § 87(2)(g)).

The investigation obtained surveillance from 14th Street–Union Square station in Manhattan (Board Review 11-15), as well as cell phone video footage provided by § 87(2)(b) (Board Review 04); however, the apprehension of § 87(2)(b) is not depicted in either footage.

Findings and Recommendations

Allegation (A) Force: On November 28, 2018, at 14th Street–Union Square subway station in Manhattan, Police Officer Atik Hossain used physical force against § 87(2)(b)

Allegation (B) Force: On November 28, 2018, at 14th Street–Union Square subway station in Manhattan, an officer hit § 87(2)(b) against the ground.

In her sworn statement to the CCRB, provided on December 13, 2018, § 87(2)(b) stated that on November 28, 2018, at approximately 4:28 p.m., she was transferring from the downtown 6 train to the L train at 14th Street–Union Square in Manhattan (Board Review 03). § 87(2)(b) saw a large crowd observing a struggle between two individuals, identified by the investigation as § 87(2)(b) and PO Hossain, on the mezzanine level of the station. PO Hossain, who was straddled atop § 87(2)(b) appeared to be having difficulty placing § 87(2)(b) in handcuffs, due to § 87(2)(b) moving his arms around behind him as he lay face-first on the ground. § 87(2)(b) observed this from the mezzanine level, from a distance of approximately ten feet.

Six uniformed police officers then rounded the S-shaped bend the leads to the L train. Two stocky white male officers began assisting PO Hossain, and positioned themselves to § 87(2)(b)'s right and left sides, respectively. From her position, § 87(2)(b) had a clear view of the officer to § 87(2)(b)'s left, while the officer to § 87(2)(b)'s right was partially obscured by the other officer. PO Hossain may have been near § 87(2)(b)'s feet at this time. § 87(2)(b) could not see § 87(2)(b)'s hands, because they were obscured by the officers, but § 87(2)(b) surmised that they were behind his back. § 87(2)(b) did not appear to have any injuries at this point, though § 87(2)(b) noted that it would have been difficult for her to discern if he did.

§ 87(2)(b) then observed the officer to § 87(2)(b)'s right lift § 87(2)(b)'s head by holding one hand against the back of his head and another against his chin. The officer then slammed § 87(2)(b)'s head down on the cement floor, making contact right above and to the left of § 87(2)(b)'s left eyebrow. § 87(2)(b) described this officer's movement as appearing "strategic" and "very intentional," almost as if he were employing a wrestling technique. The impact of § 87(2)(b)

§ 87(2)(b)'s head against the pavement generated a cracking sound, like a plastic vase being smashed against cement. Blood splattered in a circle approximately five feet in diameter, leaving a pool several inches wide where § 87(2)(b)'s head had struck the ground. The officers then picked up § 87(2)(b) who was in handcuffs, and led him away from the scene. § 87(2)(b) not see who handcuffed § 87(2)(b) though she stated that it may have been PO Hossain. § 87(2)(b) did not know where the officers took § 87(2)(b) and never learned why § 87(2)(b) was being apprehended.

§ 87(2)(g)
§ 87(2)(b) Though § 87(2)(b) stated over the phone that the officer who slammed § 87(2)(b)'s head against the ground was clearly depicted in footage she filmed regarding the incident, § 87(2)(b) was only able to identify the subject of this allegation as one of two officers wearing hats at the 00:01 minute mark, neither of whom is at any point depicted facing the camera. § 87(2)(b) claimed in her initial website complaint that the blood from the impact splattered on several onlookers, including on herself; however, § 87(2)(b) did not mention this on the phone or during her verified statement. In § 87(2)(b)'s verified statement, § 87(2)(b) stated that she blood splattered in a circle five feet in diameter, while she observed the incident from around ten feet away.

§ 87(2)(b) who was at the time of his interview incarcerated at Manhattan Detention Complex, was interviewed via video-conference on February 21, 2019 (Board Review 05). § 87(2)(b) stated that on November 28, 2018, at approximately 4:28 p.m., § 87(2)(b) exited either the downtown 4 or 5 train at 14th-Street Union Square station. As he approached the stairwell leading up to the mezzanine level, § 87(2)(b) observed PO Hossain step in front of him. PO Hossain stepped out in front of § 87(2)(b) and stared at him as if he was waiting for a reaction. § 87(2)(b) stated that PO Hossain may have said something, but that § 87(2)(b) could not hear it due to the level of background noise. PO Hossain's partner, identified by the investigation as PO Lennoxann Samerson, was talking with an individual whom § 87(2)(b) referred to only as "the complainant" at this time. PO Hossain reached for § 87(2)(b)'s backpack, at which time § 87(2)(b) backed away, stating, "Yo, don't do this, don't do this." § 87(2)(b) stated during the interview that while, for "all [he] knew," PO Hossain was someone trying to rob him, he "kind of" had a feeling that PO Hossain was an officer, due to his prior experience with being arrested on the subway. After PO Hossain failed to grab § 87(2)(b) several more times, § 87(2)(b) walked around PO Hossain and proceeded up the stairwell via the lane furthest to the right. PO Hossain continued trying to grab § 87(2)(b) as § 87(2)(b) walked up the stairs, and § 87(2)(b) continued to pull away from PO Hossain until he reached the top of the staircase, which consisted of about 12 steps in total. § 87(2)(b) denied running at this time. As he reached the top, § 87(2)(b) turned around to look at PO Hossain, who had handcuffs in his hands. At this point, § 87(2)(b) "really, really" realized that PO Hossain was an officer.

§ 87(2)(b) was "pretty sure" that he got a few steps away from the last stair when he "had the feeling that [PO Hossain] tripped [him] onto the floor." Later in the interview, § 87(2)(b) expressed varying degrees of certainty that PO Hossain intentionally tripped him. At one point, § 87(2)(b) stated that PO Hossain used his foot to trip § 87(2)(b) while simultaneously using his forearm to push § 87(2)(b) down from the back; however, he stated that he was

basing this partially on hearing PO Hossain state at the parole hearing that § 87(2)(b) tripped on the last rung of the stairs. When § 87(2)(b) heard PO Hossain state this, he concluded that PO Hossain was trying to “cover his own ass,” because the spot where he landed was too far away from the stairs for him to have tripped on the last step. When asked whether he saw or felt PO Hossain trip him, § 87(2)(b) stated, “I kind of have to say yes. I kind of know that it was something that caused me, right there, to trip over.” § 87(2)(b) ultimately stated that he felt PO Hossain tripping him, but that he did not see it.

§ 87(2)(b) fell and landed flat on the ground, hitting his head in the process. § 87(2)(b) was caught so off guard that he was not able to use his hands to break his fall. The impact of his head against the ground caused a small gash to his left temple, which began bleeding profusely. During the interview, § 87(2)(b) expressed certainty that the injury was caused when he fell to the ground, stating, “Once my head was on the floor, he got up behind me to hold me down [and] I could feel the blood starting to drip from my head. And I know it was because of the contact I made with the floor.” PO Hossain unsuccessfully attempted to handcuff § 87(2)(b) while § 87(2)(b) repeatedly pulled his hands apart as PO Hossain tried to bring them together. After around a minute, two officers in uniform situated themselves to § 87(2)(b)'s left and right sides, respectively, while PO Hossain backed off. The two uniformed officers grabbed § 87(2)(b)'s arms, brought them together behind his back, and handcuffed § 87(2)(b) without any apparent difficulty. The officers did not use any other parts of their body to subdue § 87(2)(b) and did not use any force against § 87(2)(b) aside from that used to forcefully bring his arms together behind his back.

The investigation did not locate additional civilian witnesses to this incident.

On March 13, 2019, PO Hossain provided a statement to the CCRB (Board Review 06). PO Hossain stated that at approximately 4:24 p.m. on November 28, 2018, he observed § 87(2)(b) exit an express 4 train at Grand Central station. § 87(2)(b) then abruptly turned around and pushed a white female in her 30s onto the train using his groin. PO Hossain entered the train through the same door and signaled for his partner, PO Samerson, to enter the train as well. After observing § 87(2)(b) grinding his groin against the buttocks of the white female for the entirety of the train's passage from Grand Central to 14th Street-Union Square, while the female repeatedly looked back with a look of disgust and confusion upon her face, PO Hossain followed § 87(2)(b) off the train at 14th Union Square, while PO Samerson spoke to the female against whom § 87(2)(b) had been grinding his groin.

PO Hossain positioned himself between § 87(2)(b) and the stairwell, pulled out his shield, and stated, “Police officer, stop.” § 87(2)(b) replied, “Oh no, don't do it, you can't do this to me. Let me go, let me go,” and began running up the stairs. PO Hossain chased § 87(2)(b) up the stairs, and eventually was able to maintain a grip on § 87(2)(b)'s jacket after § 87(2)(b) pulled his hand away from PO Hossain's grasp. Upon reaching the top of the staircase, § 87(2)(b) tripped and fell forward, causing his whole body to slam against the ground. PO Hossain lost contact with § 87(2)(b) as he fell. PO Hossain denied bringing § 87(2)(b) to the ground through any deliberate action, and denied seeing any officer use force against § 87(2)(b) during the interaction. Two officers whose identities PO Hossain did not recall arrived and assisted in handcuffing § 87(2)(b) and proceeded to bring § 87(2)(b) back to the

stationhouse. PO Hossain did not observe any injuries on § 87(2)(b)'s person until he saw him back at the stationhouse, where § 87(2)(b) was bleeding from his face. Because PO Hossain did not observe this injury at any point prior in the interaction, PO Hossain deduced that § 87(2)(b) sustained the injury from the impact of hitting the ground during the fall. With the aforementioned exceptions, PO Hossain's statement was generally consistent with that of § 87(2)(b).

The arrest report and TRI prepared pursuant to this incident were consistent with PO Hossain's account (Board Reviews 15 and 16).

§ 87(2)(b) provided video footage to the investigation which depicts § 87(2)(b) being led away from the scene, and which does not depict the alleged force. A still image depicting the blood splatter caused by § 87(2)(b)'s injury may be reviewed at Board Review 10. § 87(2)(b) identified the largest pool of blood visible in this photo as the spot where § 87(2)(b)'s head hit the floor.

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Patrol Guide Procedure 221-01 states that the primary duty of all members of service is to protect human life, including the lives of individuals being placed in police custody (Board Review 18). Reasonable force may be used to prevent escape from custody; however, members of service are instructed to use de-escalation techniques to gain voluntary compliance from subjects when appropriate. In determining whether force is reasonable, Patrol Guide Procedure 221-01 outlines numerous factors to be taken under consideration, including the nature and severity of the crime committed, whether the person is actively resisting custody, and whether the person is attempting to evade arrest by flight.

Active resistance is defined by Patrol Guide Procedure 221-03 as including both physically evasive movements to defeat a member of service's attempt at control, as well as verbally signally an intention to avoid being taken into custody.

Patrol Guide Procedure 221-03 outlines three levels of force, and delineates forcibly taking a suspect to the ground as falling under the first and least regulated category.

§ 87(2)(g)

Allegation (C) Abuse of Authority: On December 3, 2018, over the phone, Police Officer Jason Wells did not process § 87(2)(b)'s complaint regarding officers.

In her sworn statement, § 87(2)(b) stated that on December 3, 2018, at approximately 3:31 p.m., § 87(2)(b) called the Transit District 4 stationhouse and stated that she wished to make a complaint of “police violence” (Board Review 03). The individual who answered the phone passed the phone to another officer, who identified himself as PO Wells. PO Wells told § 87(2)(b) that the incident had “been investigated.” § 87(2)(b) inquired as to the outcome and PO Wells replied, “That’s above my paygrade.” § 87(2)(b) asked again what was determined via the investigation and was told, “Police matter. It’s above my paygrade.” § 87(2)(b) told PO Wells that she wanted to file her own report, at which time PO Wells stated, “Fine,” and provided a phone number to § 87(2)(b). § 87(2)(b) wrote down the number and did not call it, and did not know what number was provided. PO Wells did not give additional information about how to file a complaint.

In his CCRB interview on April 9, 2019, PO Wells, who has been a member of service for 14 years and was assigned to the position of telephone switchboard operator on December 3, 2019, initially stated that he had no recollection of this incident (Board Review 07). However, PO Wells stated that he received a call from a female caller who wanted to know about an incident that occurred on a day when PO Wells was not working. PO Wells knew nothing about the incident with regards to which the caller was inquiring. The caller was adamant about “getting information,” at which time PO Wells conferred with the desk sergeant. The sergeant, who PO Wells believed to be Sgt. Michael Hall, told PO Wells to refer the caller to the CCRB and to provide her with the CCRB’s phone number, which PO Wells did. PO Wells told the caller that this incident was “above [his] paygrade” and that he did not know what happened. PO Wells did not know whether the incident had already been investigated in any capacity. The caller never stated that she wished to file a complaint regarding the incident or do anything other than follow

up. PO Wells was asked, based upon his training, what he would do if someone called the stationhouse wishing to file a complaint. PO Wells replied, “Oh, you gotta refer them to the CCRB.” PO Wells stated that he would not do anything else aside from provide contact information for the CCRB, because there is nothing else that he could do.

In his interview on May 30, 2019, Sgt. Hall, who was the desk sergeant for Transit District 4 on December 3, 2018, denied having any recollection of this any civilians calling the stationhouse and trying to make a complaint on this date, or PO Wells coming to him with a question regarding a conversation he was having with a civilian (Board Review 08). Sgt. Hall stated that if a police officer received a call from a civilian trying to make a complaint, he would tell the officer to forward it to him. Sgt. Hall would refer them to 311, refer them to the CCRB, or take the complaint himself over the phone, and would make a command log entry recording the pedigree information of the person who called and the circumstances of the incident in question.

§ 87(2)(g)

Patrol Guide Procedure 207-31 states that officers who receive a civilian complaint by telephone should prepare a first copy of the civilian complaint report in their own handwriting and treat the form as if it were prepared by the complainant (Board Review 09).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is § 87(2)(b) and § 87(2)(b)'s first CCRB complaint (Board Review 19).
- PO Hossain has been a member of service for seven years. In that time, he has been the subject of two allegations in one prior CCRB complaint, § 87(2)(g)

- PO Wells has been a member of service for 14 years. In that time, he has been the subject of two allegations in one prior CCRB complaint, § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation.
- According to the Office of Court Administration, § 87(2)(b) [REDACTED] has no criminal convictions in New York City (Board Review 20).

- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- A FOIL request to determine whether § 87(2)(b) [REDACTED] or § 87(2)(b) [REDACTED] has filed a Notice of Claim pertaining to this incident was submitted on June 19, 2019 and is currently pending.

Squad No.: _____

Investigator:	_____ Signature	_____ Print Title & Name	_____ Date
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Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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